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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/557,747	11/21/2005	Toru Nishibayashi	Q91609	2298
23373 7590 03/04/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER SZNAIDMAN, MARCOS L	
			ART UNIT 1612	PAPER NUMBER
			MAIL DATE 03/04/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/557,747

**Applicant(s)**

NISHIBAYASHI ET AL.

**Examiner**

MARCOS SZNAIDMAN

**Art Unit**

1612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 5-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 26 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI/08)  
Paper No(s)/Mail Date 1 page / 08/19/08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This office action is in response to applicant's reply filed on January 21, 2009.

#### ***Status of Claims***

Amendment of claims 1 and 24 and addition of claims 26 and 27 is acknowledged.

Claims 1-27 are currently pending and are the subject of this office action.

Claims 3, and 5-25 were withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on March 31, 2008.

Claims 1, 2, 4 and 26-27 are presently under examination.

#### ***Priority***

The present application is a 371 of PCT/JP04/07436 filed on 05/252004.

#### ***Rejections and/or Objections and Response to Arguments***

Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated (Maintained Rejections and/or Objections) or newly applied (New Rejections and/or Objections, Necessitated by Amendment or New Rejections and/or Objections not

Necessitated by Amendment). They constitute the complete set presently being applied to the instant application.

***Claim Rejections - 35 USC § 103 (Maintained rejection)***

Claims 1, 2, 4 and new claims 26-27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et. al. (US 5,376,686, cited by applicant).

The reasons for this rejection have been provided in the previous office action dated July 22, 2008, the text of which is incorporated by reference herein.

Applicant's arguments have been fully considered but are not persuasive.

Applicant argues that there is no motivation to substitute the polyoxyethylene-based nonionic surfactant: polyoxyethylene phenyl ether, described by Ishikawa, with another polyoxyethylene-based nonionic surfactant: polyoxyethylene higher alkyl ether as recited in the instant claims. The reason provided by the examiner is that the instant composition is directed to a disinfectant and/or bactericidal aqueous composition, containing olanexidine acid addition salt, and polyoxyethylene higher alkyl ether as the polyoxyethylene-based nonionic surfactant in order to obtain an aqueous composition that contains olanexidine or a salt thereof dissolved in high concentration. In contrast, Ishikawa merely discloses that olanexidine can be in the form of a solution, a dispersion or a suspension by dissolving, dispersing or suspending a specified amount of a biguanidine in water or an organic solvent. Since Ishikawa does not mention or even

recognize that olanexidine or a salt thereof is only slightly soluble in water, there is no motivation that would lead a skilled artisan to increase the concentration of a solution of olanexidine or a salt thereof.

Examiner's response: Ishikawa also teaches a disinfectant composition of olanexidine with a polyoxyethylene-based nonionic surfactant: polyoxyethylene phenyl ether in water (see column 23 and column 24: prescription 1 of disinfectant). The only difference between the teachings of Ishikawa and the instant application is the nature of the polyoxyethylene-based nonionic surfactant used: polyoxyethylene phenyl ether in the Ishikawa reference, and polyoxyethylene higher alkyl ether in the instant application. Both compounds have very similar structures, except for the terminal head which is phenyl in one case and higher alkyl in the other. However, both compounds are known surfactants which belong to the same type: polyoxyethylene-based nonionic surfactant, so they are expected to have, not identical, but very similar properties, so: at the time of the invention it would have been *prima facie* obvious for a person of ordinary skill in the art to substitute one functional equivalence (any polyoxyethylene-based nonionic surfactant like polyoxyethylene phenyl ether) for another (polyoxyethylene higher alkyl ether) with an expectation of success, since the prior art establishes that both function in similar manner, thus resulting in the practice of claims 1-2, 4 and 25-26, with a reasonable expectation of success.

### ***Conclusion***

No claims are allowed.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARCOS SZNAIDMAN whose telephone number is (571)270-3498. The examiner can normally be reached on Monday through Thursday 8 AM to 6 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick F. Krass can be reached on 571 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MARCOS SZNAIDMAN/  
Examiner, Art Unit 1612  
February 25, 2009

/Frederick Krass/

Supervisory Patent Examiner, Art Unit 1612